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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:
THE RHODES COMPANIES, LLC, aka
"Rhodes Homes," et al.,

Reorganized Debtors

☒ Affects all Debtors

☐ Affects the following Debtors

Case No.: 09-14814-LBR
(Jointly Administered)

Chapter 11

**JAMES RHODES' MOTION TO
RECONSIDER ORDER SUSTAINING
REORGANIZED DEBTORS'
OBJECTION TO JAMES RHODES'
ENTITLEMENT TO THE TAX CLAIM
FOUND IN PROOF OF CLAIM
NO. 814-33**

Hearing Date: _____
Hearing Time: _____
Place: _____

James M. Rhodes ("**Rhodes**"), pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, made applicable herein pursuant to Rules 9014(c) and 7054 of the Federal Rules of Bankruptcy Procedure, respectfully requests that the Court reconsider its *Order Sustaining Reorganized Debtors' Objection to James Rhodes' Entitlement to the Tax Claim Found in Proof of Claim No. 814-33* dated November 16, 2010 [Doc. No. 1318] (the "**Order**").

1 By this Motion, Rhodes requests that the Court reconsider its Order and find, as a matter
 2 of law, that Rhodes has a sufficient entitlement to a “claim,” as that term is defined in 11 U.S.C.
 3 § 101(5), for this matter to proceed to discovery. At the hearing on the Objection to Rhodes’
 4 Proof of Claim, counsel for Rhodes failed to focus the Court’s attention on a key, undisputed fact
 5 and a well-recognized rule of law establishing an enforceable right to reimbursement of the taxes
 6 paid by Rhodes. Prior to the Petition Date, a valid distribution was declared from each of the
 7 Debtor Entities to Rhodes for the 2006 tax year. Such distributions were booked as liabilities for
 8 the respective Debtor Entities and, as of the Petition Date, remained accrued but unpaid. The
 9 general rule is that a declaration of a distribution incurs a debtor-creditor relationship between the
 10 company and its member. *See, e.g., Anardarko Petroleum Corp., v. Panhandle E. Corp.*, 545
 11 A.2d 1171, 1175 (Del. 1998); 11 FLETCHER CYC. CORP. § 5323; Nev. Rev. Stat. § 86.346; Del.
 12 Code Ann. tit. 6, § 18-606. Accordingly, and as set forth more fully in the memorandum filed
 13 concurrently herewith, Rhodes is a “creditor” and holds a “claim” within the meaning of 11
 14 U.S.C. § 101(5). It was manifest error to find otherwise.

15 **WHEREFORE**, Rhodes respectfully requests that the Order Sustaining Reorganized
 16 Debtors’ Objection to James Rhodes’ Entitlement to the Tax Claim Found in Proof of Claim
 17 No. 814-33 be vacated, and for any such further relief which the Court may deem just and
 18 appropriate under the circumstances.

19 DATED this 2nd day of June, 2011.

20 /s/ Kevin N. Anderson

21 Kevin N. Anderson

22 FABIAN & CLENDENIN

23 Attorneys for James M. Rhodes